

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

<b>KENNETH R. CLEVELAND, SR.,</b>	)	
<b>PLAINTIFF,</b>	)	
	)	
<b>vs.</b>	)	<b>CASE No. 11-CV-381-FHM</b>
	)	
<b>MICHAEL J. ASTRUE, Commissioner,</b>	)	
<b>Social Security Administration,</b>	)	
<b>DEFENDANT.</b>	)	

**OPINION AND ORDER**

Plaintiff has filed a Motion for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act [Dkt. 19] (EAJA), 28 U.S.C. § 2412(d). The motion requests an award of \$5,406.50 in attorney fees. The Commissioner did not file a Response to Plaintiff's motion and time to do so has expired.

The Court finds the hourly rate and number of hours expended to be reasonable. Plaintiff's Motion for Award of Attorney's Fees Pursuant to the Equal Access to Justice Act [Dkt. 19] is GRANTED. EAJA fees in the amount of \$5,406.50 are awarded. In the event attorney fees are also awarded under 42 U.S.C. § 406(b)(1), Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

SO ORDERED this 3rd day of January, 2013.

  
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**FRANK H. McCARTHY**  
**UNITED STATES MAGISTRATE JUDGE**